COS District Captains Group - Feb 28, 2015

Thank you for taking the time and making the effort to respond to my post. My six-points were not so much requests for specific clarification but rather an orientation for others who might enter the conversation without the time to read the underlying articles/posts.

Also for another good repository of historical documents on-line Library of Congress

http://memory.loc.gov/ammem/amlaw/lawhome.html

My specific question has to do with matters of law the Walker used in his lawsuits. Specifically Coleman v. Miller.

I can read the opinion of the Supreme Court http://openjurist.org/307/us/433#fn3_ref.

Not being a lawyer I don't understand the relative significance of parts of a decision. If a concurring opinion details some aspects that were not in the body of the decision do those details become "law"? What weight does a dissenting opinion have? Is it just whining or will it have impact in the future?

I have reproduce Coleman v. Miller paragraph 43 with emphasis and comments. I just seems like this opinion gives Congress a great deal of authority over the amendment "process" while never mentioning the role of the states beyond

ratification in ‘a reasonable time’. If anyone has the time and wants to help me over these hurdles I would appreciate it.

43 **The Constitution grants Congress exclusive power to control submission of constitutional amendments. (Bold and/or underline emphasis added in all cases; comments in red […]) [– what does … “power to control submission” … mean?]** Final determination by Congress that ratification by three-fourths of the States has taken place 'is conclusive upon the courts.'2

In the exercise of that power, Congress, of course, is governed by the Constitution. However, whether submission, intervening procedure or Congressional determination of ratification conforms to the commands of the Constitution, call for decisions by a 'political department' of questions of a type which this Court has frequently designated 'political.' And decision of a 'political question' by the 'political department' to which the Constitution has committed it 'conclusively binds the judges, as well as all other officers, citizens, and subjects of * * * government.'3

Proclamation under authority of Congress that an amendment has been ratified will carry with it a solemn insurance by the Congress that ratification has taken place as the Constitution commands. Upon this assurance a proclaimed amendment must be accepted as a part of the Constitution, leaving to the judiciary its traditional authority of interpretation.4

To the extent that the Court's opinion in the present case even impliedly assumes a power to make judicial interpretation of the exclusive constitutional authority of Congress over submission and ratification of amendments, we are unable to agree. **(not sure what this means)**

45 The Court here treats the amending process of the Constitution in some respects as subject to judicial construction, in others as subject to the final authority of the Congress.

There is no disapproval of the conclusion arrived at in Dillon v. Gloss,5 **that the Constitution impliedly requires that a properly submitted amendment must die unless ratified within a 'reasonable time.'** Nor does the Court now disapprove its prior assumption of power to make such a

pronouncement. And it is not made clear that only Congress has constitutional power to determine if there is any such implication in Article V of the Constitution.

On the other hand**, the Court's opinion declares that Congress has the exclusive power to decide the 'political questions' of whether a State whose legislature has once acted upon a proposed amendment may subsequently reverse its position**, and whether, **in the circumstances of such a case as this, an amendment is dead because an 'unreasonable' time has elapsed**.

Such division between the political and judicial branches of the government is made by Article V which **grants power over the amending of the Constitution to Congress alone**. **[Ignoring the federal role of the states. Is that because the question before the court relates to the setting of rules regarding vitality and timeliness? Certainly the States don't have a role in that question]** Undivided **control of that process has been given by the Article exclusively and completely to Congress**. **[how does one interpret this broad statement?]** The process itself is 'political' in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point.

Then there is this dissenting opinion (paragraph separations added):

65 Mr. Justice BUTLER, dissenting

69 'We do not find anything in the article which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the states may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary.

First, proposal and ratification are not treated as unrelated acts, but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time.

Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently.